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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 130702583-3999-02]

RIN 0648-BD40

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Annual Catch Limits and Accountability Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS is implementing the approved measures in an omnibus amendment to three of the Mid-Atlantic Fishery Management Council's fishery management plans. The omnibus amendment changes the accountability measures for the Atlantic mackerel, Atlantic bluefish, summer flounder, scup, and black sea bass recreational fisheries. These measures are intended to more appropriately address accountability in the recreational fisheries.

DATES: Effective [insert date 30 days after date of publication in the Federal Register].

ADDRESSES: The Mid-Atlantic Fishery Management Council prepared an environmental assessment (EA) for the Recreational Accountability Measures (AM) Omnibus Amendment that describes the proposed action and other considered alternatives, and provides a thorough analysis of the impacts of the proposed measures and alternatives. Copies of the Recreational AM Omnibus Amendment, including the EA, are available on request from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, 800 North State Street,

Suite 201, Dover, DE 19901. These documents are also available online at

<http://www.mafmc.org>.

FOR FURTHER INFORMATION CONTACT: Moira Kelly, Fishery Policy Analyst, (978) 281-9218.

SUPPLEMENTARY INFORMATION:

Background

In 2011, the Council adopted, and NMFS implemented, an Omnibus Annual Catch Limit (ACL) and AM Amendment (76 FR 60606) to establish AMs for the commercial and recreational fisheries that catch Atlantic mackerel, butterfish, Atlantic bluefish, summer flounder, scup, black sea bass, golden tilefish, ocean quahog, and Atlantic surfclams. The AMs for the recreational fisheries included an in-season closure requirement for the Regional Administrator when landings were known to have reached the recreational harvest limit (RHL), and pound-for-pound payback of any overage. In 2012, the recreational black sea bass fishery significantly exceeded its RHL. The pound-for-pound payback requirement in place under the 2011 amendment would drastically limit the recreational black sea bass fishery in fishing year 2014. As a result, the Council decided to review the recreational fishery AMs to determine whether a different approach to recreational accountability would be more appropriate. Specifically, the Council wanted to develop AMs that take into account the status of the stock and the biological consequences, if any, resulting from a recreational sector overage.

Beginning in 2012, the Council developed a second omnibus amendment to its FMPs, specifically to revise the recreational AMs. The Council adopted this amendment in June 2013, and submitted it to NMFS for review. NMFS published a Notice of Availability (NOA) for the amendment on September 4, 2013 (78 FR 54442), and a proposed rule on September 18, 2013

(78 FR 57341). The comment periods ended on November 4, 2013, and October 18, 2013, respectively.

Disapproved Measure

The Council recommended comparing the 3-yr moving average of the lower confidence limit of the recreational catch estimate to the 3-yr moving average of the recreational ACL to determine whether an ACL overage has occurred. NMFS has disapproved this measure because it is inconsistent with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) National Standard 2 requirement to use the best scientific information available in developing management measures. While there is some uncertainty in the recreational catch point estimate, it is just as likely that the true value of the catch is above the point estimate as it is below it. In the proposed rule, we expressed concern that using the lower confidence limit may not meet the National Standard 2 requirement to use the best scientific information available, and we specifically requested comments on the issue.

The public comments received were split on the topic—members of the public who identified themselves as recreational participants supported the Council’s recommendation and members of the public who identified themselves as commercial fishermen or conservationists did not. The public comments in support of the lower confidence limit approach discussed it as a more “appropriate” use of statistics, as the Marine Resource Information Program (MRIP) provides a measure of uncertainty (the PSE, or proportional standard error) that should be considered when using the data. The public comments that supported the use of the point estimate stated that the lower confidence limit has an approximately 84-percent chance of being below the true recreational catch value, and would likely result in persistent underestimation of the true recreational catch.

The Council, which also submitted a comment during the proposed rule comment period, suggested that the overall structure of the catch limits provides enough assurance that even chronic underestimating of recreational catch could not lead to overfishing or cause the stock to become overfished. However, even if the catch limit structure would prevent overfishing, as it is defined, chronic underestimating of catch and the resultant reduced stock size could lead to reduced overall catch limits that would reduce the commercial fishing limits, even if the commercial fishery stayed within its required limits.

Because of the concerns expressed in the proposed rule, as well as those expressed in several public comments, NMFS disapproved the Council's preferred approach to determine whether a recreational ACL has been exceeded. Although the Council and public comments supporting using the lower confidence limit expressed valid concerns regarding the accuracy of the MRIP data and the confidence in the overall structure of the Council's catch limits, NMFS does not concur that using the lower confidence limit meets the National Standard 2 requirement to use the best available science.

By disapproving this measure, the status quo approach of using the 3-yr moving average of the point estimate from MRIP for the summer flounder, scup, and black sea bass and a single-year point estimate from MRIP for the Atlantic bluefish and mackerel fisheries remains as the mechanism to determine whether the recreational fishing ACL was exceeded.

Approved Measures

1. In-Season Closure Authority. This rule removes the in-season closure requirement for the affected recreational fisheries. The delay in receiving recreational landings information, combined with regional differences in the recreational fisheries and the resultant disproportional impacts of an in-season closure, led the Council to recommend removing this requirement.

2. Incorporate stock status in AM determination. This rule implements a system of AMs that would result in a payback if: (1) The stock is overfished (i.e., the most recent estimate of biomass (B) is below the threshold, or $B/B_{MSY} < 1/2$), under a rebuilding plan, or if stock status is unknown, and the ACL is exceeded; or (2) biomass is below the target, but above the threshold (i.e., $1/2 < B/B_{MSY} < 1$), and the acceptable biological catch (ABC) is exceeded. Otherwise, adjustments to the management measures will be used as an AM. This adjustment would be in addition to any necessary adjustments needed to meet that year's new catch limits.

The Council currently adjusts its management measures to achieve, but not exceed, the next year's catch limit based largely on what the fishery caught in the current year. If the next year's catch limit is higher than this year's catch, then measures may be liberalized. Conversely, if the next year's catch limit is lower than this year's catch, then measures must be tightened. These adjustments happen independently of any catch limit overage. The Council intends for the overage to result in a "performance review," such that if an overage does occur, an adjustment to the expectations associated with how well those measures would be likely achieve, but not exceed, the target would be incorporated into the coming year's measures determination. This would result in measures potentially being less liberal, or tightened more, than they otherwise would have been, had the overage not occurred.

3. Scaled payback calculation. The amount of a payback (if determined to be appropriate under 2, above) will be scaled relative to the biomass. That is, the payback will be the product of the difference between the catch and the ACL (i.e., the overage amount) and the payback coefficient. The payback coefficient is equal to the difference between the most recent estimates of B_{MSY} and current biomass, divided by $1/2 B_{MSY}$.

This will result in a smaller payback, the closer the estimated biomass is to the target, and a larger payback the farther away the estimated biomass is from the target. This scaling is intended to minimize the economic impacts of a payback for healthy stocks, while still accounting for the biological consequences of the overage. This scaling will not be used if the stock is overfished (i.e., if $B/B_{MSY} < 1/2$), or if the stock status is unknown. In those cases, the payback will be equal to the full amount of the overage. In addition, if the stock is above the target (i.e., $B/B_{MSY} > 1$), then the payback will be zero.

The regulations implementing these measures were deemed by the Council to be consistent with the amendment, and necessary to implement such provisions pursuant to section 303(c) of the Magnuson-Stevens Act through a letter, dated August 20, 2013, from the Council Chairman to the NMFS Regional Administrator.

Public Comments

Fifteen public comments were received during the public comment periods. Nine comments were received on the proposed rule, and six comments were received on the NOA.

Comment 1: One commenter expressed frustration that the Council and NMFS were considering revising the recreational AMs as a result of the black sea bass recreational overage, but did not comment specifically on the proposed measures.

Response: NMFS supported the Council in reviewing the recreational AMs to determine whether measures more appropriate for the unique aspects of these recreational fisheries were available. After determining that more suitable approaches were available, NMFS supported the Council in modifying these AMs and avoiding unnecessary consequences in the recreational black sea bass fishery, and has approved most of the Omnibus Amendment.

Comment 2: One commenter expressed general frustration with the differences between management of the recreational and commercial fisheries, but did not specifically comment on the proposed measures. The commenter focused primarily on the difference between the commercial and recreational minimum sizes.

Response: The management of the commercial fishery is not the subject of this amendment. Comments on appropriate minimum sizes are more applicable to the rules that implement those minimum sizes for each recreational fishery.

Comment 3: One commenter expressed concern over the ability to overfish a species into extinction. The commenter also stated that we need to do everything possible to prevent overfishing, and that we should hold commercial fisheries accountable to prevent the extinction of any fish species.

Response: The management of the commercial fisheries is not the subject of this amendment, and comments related to the commercial fisheries are more appropriately directed to the rules specific to those fisheries. In addition, none of the subject fisheries are overfished or experiencing overfishing at this time, nor are they in any danger of becoming extinct. Further, the management programs for these species are intended to maintain healthy population levels.

Comment 4: Four comments directly, and three comments generally, supported the Council's recommended approach to determining whether the recreational harvest has exceeded the ACL. These commenters included recreational fishermen, a recreational fisheries organization, and the Council. These commenters stated that using the lower confidence limit value was a more statistically valid approach to addressing the uncertainty in the recreational catch estimates, and that treating the recreational estimate the same as the commercial data is inappropriate.

Response: NMFS disagrees, for the reasons stated above. Each of the commenters mentioned the “uncertainty” in the recreational harvest estimates from MRIP as the basis for supporting the idea of using the lower confidence limit value. There is uncertainty in the recreational harvests estimates; however, using the lower confidence limit value would significantly increase the chances of underestimating recreational catch. The Council, in its comment, stated that recreational fisheries management has routinely ignored the uncertainty in the catch estimate. There is a roughly 84-percent chance that the value at the lower confidence limit is below the true value, as opposed to the 50-percent chance that the true value is below the point estimate. Using the lower confidence limit value continues to ignore the uncertainty that recreational catch is just as likely higher than the point estimate as it is less than the point estimate.

Further, while the overall catch limit structure may provide some assurance that a stock would not be overfished as a result of routinely underestimating recreational catch, the overall catch limits, and consequently, the commercial catch limits, would likely need to be reduced as a result of a reduced stock size. This would be required even if the commercial fishery had not exceeded its catch limits. This would seemingly hold the commercial fishery accountable for the recreational fishery’s overage, and for summer flounder, scup, and black sea bass, as described in comment 9, shift the allocation of landings between the commercial and recreational sectors, contrary to the FMP requirements.

For these reasons, NMFS has determined that the point estimate, as derived by MRIP, is the best available estimate of recreational harvest, and that using a different value would violate National Standard 2.

Comment 5: Two commenters directly, and three commenters generally, who identified themselves as commercial fishermen or conservationists, shared NMFS' concerns with the Council's recommendation to use the lower confidence limit value, and recommended that NMFS disapprove that measure.

Response: NMFS agrees, for the reasons stated above, and did disapprove that measure.

Comment 6: The commenters who supported using the lower confidence limit approach also supported eliminating the in-season closure requirement and the pound-for-pound payback, in favor of the proposed approach that would only result in a payback in certain conditions.

Response: NMFS agrees, for the reasons stated above.

Comment 7: The commenters who opposed using the lower confidence limit approach also supported maintaining the in-season closure requirement and the pound-for-pound payback as they are currently implemented, generally.

Response: NMFS disagrees, for the reasons stated above. The continuation of the in-season closure requirement would likely result in disproportionate impacts on states whose recreational fisheries occur later in the year, when an in-season closure would be applied. NMFS also supports the Council's proposed AM structure, as it better addresses the operational issues that may have led to the overage (i.e., by further refining the management measures in the subsequent year) as well as mitigating the potential biological consequences resulting from an overage.

Comment 8: Two commenters disagreed with the Council's recommendation to maintain the existing annual catch target (ACT) setting process because it is "flawed and produces highly inaccurate results," but did not recommend a different approach.

Response: NMFS concurs with the Council's decision to maintain the existing ACT process because the alternatives considered would have reduced the Council's flexibility in setting ACTs.

Comment 9: Two commenters, who identified themselves as commercial fishermen, commented on the change in the distribution in landings between the commercial and recreational fisheries, primarily as a result of the recreational fishery landing more than its allocation. The commenters said this was particularly an issue in the black sea bass fishery, and suggested that additional quota be made available to the commercial fishery to compensate.

Response: The black sea bass quota is allocated according to the FMP (51 percent to the recreational fishery and 49 percent to the commercial fishery) during the annual specifications process. NMFS concurs with the Council that the approved modifications to the recreational AMs will help ensure better management of the recreational fisheries and prevent chronic overharvesting in the recreational fishery. NMFS does not have the legal authority to redistribute quota in subsequent years because of the over- or under-harvest of one sector of the fishery.

Classification

Except for the measure identified as disapproved, the Administrator, Northeast Region, NMFS, determined that the Recreational AM Omnibus Amendment is necessary for the conservation and management of the recreational Atlantic bluefish, Atlantic mackerel, summer flounder, scup, and black sea bass fisheries and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

The Office of Management and Budget has determined that this final rule is not significant for the purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: December 12, 2013.

Alan D. Risenhoover,
Director, Office of Sustainable Fisheries,
performing the functions and duties of the
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 648.24, paragraph (b)(6) is removed and paragraphs (b)(2) through (b)(5) are revised to read as follows:

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§ 648.24 Fishery closures and accountability measures.

* * * * *

(b) * * *

(2) Mackerel commercial landings overage repayment. If the mackerel ACL is exceeded and commercial fishery landings are responsible for the overage, then landings in excess of the DAH will be deducted from the DAH the following year, as a single-year adjustment to the DAH.

(3) Non-landing AMs. In the event that the ACL is exceeded, and that the overage has not been accommodated through the landing-based AM described in paragraph (b)(2) of this section, but is attributable to the commercial sector, then the exact amount, in pounds, by which the commercial ACT was exceeded will be deducted from the following year's commercial ACT, as a single-year adjustment.

(4) Mackerel recreational AMs. If the mackerel ACL is exceeded and the recreational fishery landings are responsible for the overage, then the following procedure will be followed:

(i) If biomass is below the threshold, the stock is under rebuilding, or biological reference points are unknown. If the most recent estimate of biomass is below the B_{MSY} threshold (i.e., B/B_{MSY} is less than 0.5), the stock is under a rebuilding plan, or the biological reference points (B or B_{MSY}) are unknown, and the ACL has been exceeded, then the exact amount, in pounds, by which the most recent year's recreational catch estimate caused the most recent year's ACL to be exceeded will be deducted from the following year's recreational ACT, as a single-year adjustment.

(ii) If biomass is above the threshold, but below the target, and the stock is not under rebuilding. If the most recent estimate of biomass is above the biomass threshold (B/B_{MSY} is

greater than 0.5), but below the biomass target (B/B_{MSY} is less than 1.0), and the stock is not under a rebuilding plan, then the following AMs will apply:

(A) If the ACL has been exceeded. If the ACL has been exceeded, then adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as a single-year adjustment.

(B) If the ABC has been exceeded. If the ABC has been exceeded, then a single-year adjustment to the following year's recreational ACT will be made, as described below. In addition, adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following year.

(1) Adjustment to ACT. If an adjustment to the following year's ACT is required, then the recreational ACT will be reduced by the exact amount, in pounds, of the product of the recreational overage, defined as the difference between the recreational contribution to the catch above the ACL, and the payback coefficient specified in paragraph (b)(4)(ii)(B)(2) of this section.

(2) Payback coefficient. The payback coefficient is the difference between the most recent estimates of B_{MSY} and biomass (i.e., $B_{MSY} - B$) divided by one-half of B_{MSY} .

(iii) If biomass is above B_{MSY} . If the most recent estimate of biomass is above B_{MSY} (i.e., B/B_{MSY} is greater than 1.0), then adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as a single-year adjustment.

(5) Mackerel ACL overage evaluation. The ACL will be evaluated based on a single-year examination of total catch (landings and discards). Both landings and dead discards will be evaluated in determining if the ACL has been exceeded. NMFS shall make determinations about overages and implement any changes to the ACL, in accordance with the Administrative Procedure Act, through notification in the Federal Register, by May 15 of the fishing year in which the deductions will be made.

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3. In § 648.103, paragraph (b)(3) is added and paragraphs (c), (d), and (e) are revised to read as follows:

§ 648.103 Summer flounder accountability measures.

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(b) * * *

(3) Non-landing accountability measure. In the event that the commercial ACL is exceeded and that the overage has not been accommodated through the landings-based AM, then the exact amount by which the commercial ACL was exceeded, in pounds, will be deducted, as soon as possible, from the applicable subsequent single fishing year commercial ACL.

(c) Recreational ACL Evaluation. The recreational sector ACL will be evaluated based on a 3-year moving average comparison of total catch (landings and dead discards). Both landings and dead discards will be evaluated in determining if the 3-year average recreational sector ACL has been exceeded. The 3-year moving average will be phased in over the first 3 years, beginning with 2012: Total recreational catch from 2012 will be compared to the 2012 recreational sector ACL; the average total catch from both 2012 and 2013 will be compared to the average of the 2012 and 2013 recreational sector ACLs; the average total catch from 2012,

2013, and 2014 will be compared to the average of the 2012, 2013, and 2014 recreational sector ACLs; and for all subsequent years, the preceding 3-year average recreational total catch will be compared to the preceding 3-year average recreational sector ACL.

(d) Recreational AMs. If the recreational ACL is exceeded, then the following procedure will be followed:

(1) If biomass is below the threshold, the stock is under rebuilding, or biological reference points are unknown. If the most recent estimate of biomass is below the B_{MSY} threshold (i.e., B/B_{MSY} is less than 0.5), the stock is under a rebuilding plan, or the biological reference points (B or B_{MSY}) are unknown, and the recreational ACL has been exceeded, then the exact amount, in pounds, by which the most recent year's recreational catch estimate exceeded the most recent year's recreational ACL will be deducted, in the following fishing year, or as soon as possible, thereafter, once catch data are available, from the recreational ACT, as a single-year adjustment.

(2) If biomass is above the threshold, but below the target, and the stock is not under rebuilding. If the most recent estimate of biomass is above the biomass threshold (B/B_{MSY} is greater than 0.5), but below the biomass target (B/B_{MSY} is less than 1.0), and the stock is not under a rebuilding plan, then the following AMs will apply:

(i) If the Recreational ACL has been exceeded. If the Recreational ACL has been exceeded, then adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as a single-year adjustment.

(ii) If the ABC has been exceeded. If the ABC has been exceeded, then a single-year adjustment to the recreational ACT will be made, in the following fishing year, or as soon as possible thereafter, once catch data are available, as described in paragraph (d)(2)(ii)(A) of this section. In addition, adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following year.

(A) Adjustment to Recreational ACT. If an adjustment to the following year's Recreational ACT is required, then the ACT will be reduced by the exact amount, in pounds, of the product of the overage, defined as the difference between the recreational catch and the recreational ACL, and the payback coefficient, as specified in paragraph (d)(2)(ii)(B) of this section.

(B) Payback coefficient. The payback coefficient is the difference between the most recent estimate of biomass and B_{MSY} (i.e., $B_{MSY} - B$) divided by one-half of B_{MSY} .

(3) If biomass is above B_{MSY} . If the most recent estimate of biomass is above B_{MSY} (i.e., B/B_{MSY} is greater than 1.0), then adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as a single-year adjustment.

(e) State/Federal disconnect AM. If the total catch, allowable landings, commercial quotas, and/or RHL measures adopted by the ASMFC Summer Flounder, Scup and Black Sea Bass Management Board and the MAFMC differ for a given fishing year, administrative action will be taken as soon as possible to revisit the respective recommendations of the two groups.

The intent of this action shall be to achieve alignment through consistent state and Federal measures such that no differential effects occur on Federal permit holders.

4. In § 648.123, paragraphs (b), (c), and (d) are revised and paragraph (e) is added to read as follows:

§ 648.123 Scup accountability measures.

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(b) Non-landing accountability measure. In the event that the commercial ACL has been exceeded and the overage has not been accommodated through the landings-based AM, then the exact amount by which the commercial ACL was exceeded, in pounds, will be deducted, as soon as possible, from the applicable subsequent single fishing year commercial ACL.

(c) Recreational ACL. The recreational sector ACL will be evaluated based on a 3-year moving average comparison of total catch (landings and dead discards). Both landings and dead discards will be evaluated in determining if the 3-year average recreational sector ACL has been exceeded. The 3-year moving average will be phased in over the first 3 years, beginning with 2012: Total recreational total catch from 2012 will be compared to the 2012 recreational sector ACL; the average total catch from both 2012 and 2013 will be compared to the average of the 2012 and 2013 recreational sector ACLs; the average total catch from 2012, 2013, and 2014 will be compared to the average of 2012, 2013, and 2014 recreational sector ACLs; and for all subsequent years, the preceding 3-year average recreational total catch will be compared to the preceding 3-year average recreational sector ACL.

(d) Recreational AMs. If the recreational ACL is exceeded, then the following procedure will be followed:

(1) If biomass is below the threshold, the stock is under rebuilding, or biological reference points are unknown. If the most recent estimate of biomass is below the B_{MSY} threshold (i.e., B/B_{MSY} is less than 0.5), the stock is under a rebuilding plan, or the biological reference points (B or B_{MSY}) are unknown, and the recreational ACL has been exceeded, then the exact amount, in pounds, by which the most recent year's recreational catch estimate exceeded the most recent year's recreational ACL will be deducted in the following fishing year, or as soon as possible, thereafter, once catch data are available, from the recreational ACT, as a single-year adjustment.

(2) If biomass is above the threshold, but below the target, and the stock is not under rebuilding. If the most recent estimate of biomass is above the biomass threshold (B/B_{MSY} is greater than 0.5), but below the biomass target (B/B_{MSY} is less than 1.0), and the stock is not under a rebuilding plan, then the following AMs will apply:

(i) If the Recreational ACL has been exceeded. If the Recreational ACL has been exceeded, then adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as a single-year adjustment.

(ii) If the ABC has been exceeded. If the ABC has been exceeded, then a single year adjustment to the recreational ACT will be made, in the following fishing year, or as soon as possible thereafter, once catch data are available, as described in paragraph (d)(2)(ii)(A) of this section. In addition, adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following year.

(A) Adjustment to Recreational ACT. If an adjustment to the following year's Recreational ACT is required, then the ACT will be reduced by the exact amount, in pounds, of the product of the overage, defined as the difference between the recreational catch and the recreational ACL, and the payback coefficient, as specified in paragraph (d)(2)(ii)(B) of this section.

(B) Payback coefficient. The payback coefficient is the difference between the most recent estimate of biomass and B_{MSY} (i.e., $B_{MSY} - B$) divided by one-half of B_{MSY} .

(3) If biomass is above B_{MSY} . If the most recent estimate of biomass is above B_{MSY} (i.e., B/B_{MSY} is greater than 1.0), then adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as a single-year adjustment.

(e) State/Federal disconnect AM. If the total catch, allowable landings, commercial quotas, and/or RHL measures adopted by the ASMFC Summer Flounder, Scup and Black Sea Bass Management Board and the MAFMC differ for a given fishing year, administrative action will be taken as soon as possible to revisit the respective recommendations of the two groups. The intent of this action shall be to achieve alignment through consistent state and Federal measures such that no differential effects occur on Federal permit holders.

5. In § 648.143, paragraphs (b), (c), and (d) are revised and paragraph (e) is added to read as follows:

§ 648.143 Black sea bass Accountability Measures.

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(b) Non-landing accountability measure. In the event that the commercial ACL has been exceeded and the overage has not been accommodated through the landings-based AM, then the exact amount by which the commercial ACL was exceeded, in pounds, will be deducted, as soon as possible, from the applicable subsequent single fishing year commercial ACL.

(c) Recreational ACL Evaluation. The recreational sector ACL will be evaluated based on a 3-year moving average comparison of total catch (landings and dead discards). Both landings and dead discards will be evaluated in determining if the 3-year average recreational sector ACL has been exceeded. The 3-year moving average will be phased in over the first 3 years, beginning with 2012: Total recreational total catch from 2012 will be compared to the 2012 recreational sector ACL; the average total catch from both 2012 and 2013 will be compared to the average of the 2012 and 2013 recreational sector ACLs; the average total catch from 2012, 2013, and 2014 will be compared to the average of the 2012, 2013, and 2014 recreational sector ACLs and, for all subsequent years, the preceding 3-year average recreational total catch will be compared to the preceding 3-year average recreational sector ACL.

(d) Recreational AMs. If the recreational ACL is exceeded, then the following procedure will be followed:

(1) If biomass is below the threshold, the stock is under rebuilding, or biological reference points are unknown. If the most recent estimate of biomass is below the B_{MSY} threshold (i.e., B/B_{MSY} is less than 0.5), the stock is under a rebuilding plan, or the biological reference points (B or B_{MSY}) are unknown, and the recreational ACL has been exceeded, then the exact amount, in pounds, by which the most recent year's recreational catch estimate exceeded the most recent year's recreational ACL will be deducted in the following fishing year, or as

soon as possible thereafter, once catch data are available, from the recreational ACT, as a single-year adjustment.

(2) If biomass is above the threshold, but below the target, and the stock is not under rebuilding. If the most recent estimate of biomass is above the biomass threshold (B/B_{MSY} is greater than 0.5), but below the biomass target (B/B_{MSY} is less than 1.0), and the stock is not under a rebuilding plan, then the following AMs will apply:

(i) If the Recreational ACL has been exceeded. If the Recreational ACL has been exceeded, then adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as a single-year adjustment.

(ii) If the ABC has been exceeded. If the ABC has been exceeded, then a single-year adjustment to the recreational ACT will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as described in paragraph (d)(2)(ii)(A) of this section. In addition, adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following year.

(A) Adjustment to Recreational ACT. If an adjustment to the following year's Recreational ACT is required, then the ACT will be reduced by the exact amount, in pounds, of the product of the overage, defined as the difference between the recreational catch and the recreational ACL, and the payback coefficient, as specified in paragraph (d)(2)(ii)(B) of this section.

(B) Payback coefficient. The payback coefficient is the difference between the most recent estimate of biomass and B_{MSY} (i.e., $B_{MSY} - B$) divided by one-half of B_{MSY} .

(3) If biomass is above B_{MSY} . If the most recent estimate of biomass is above B_{MSY} (i.e., B/B_{MSY} is greater than 1.0), then adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as a single-year adjustment.

(e) State/Federal disconnect AM. If the total catch, allowable landings, commercial quotas, and/or RHL measures adopted by the ASMFC Summer Flounder, Scup and Black Sea Bass Management Board and the MAFMC differ for a given fishing year, administrative action will be taken as soon as possible to revisit the respective recommendations of the two groups. The intent of this action shall be to achieve alignment through consistent state and Federal measures such that no differential effects occur to Federal permit holders.

6. In § 648.163, paragraphs (d) and (e) are revised to read as follows:

§ 648.163 Bluefish Accountability Measures (AMs).

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(d) Recreational landings AM when the ACL is exceeded and no sector-to-sector transfer of allowable landings has occurred. If the fishery-level ACL is exceeded and landings from the recreational fishery are determined to be the sole cause of the overage, and no transfer between the commercial and recreational sector was made for the fishing year, as outlined in § 648.162(b)(2), then the following procedure will be followed:

(1) If biomass is below the threshold, the stock is under rebuilding, or biological reference points are unknown. If the most recent estimate of biomass is below the B_{MSY}

threshold (i.e., B/B_{MSY} is less than 0.5), the stock is under a rebuilding plan, or the biological reference points (B or B_{MSY}) are unknown, and the ACL has been exceeded, then the exact amount, in pounds, by which the most recent year's recreational catch estimate exceeded the most recent year's ACL will be deducted from the following year's recreational ACT, or as soon as possible thereafter, once catch data are available, as a single-year adjustment.

(2) If biomass is above the threshold, but below the target, and the stock is not under rebuilding. If the most recent estimate of biomass is above the biomass threshold (B/B_{MSY} is greater than 0.5), but below the biomass target (B/B_{MSY} is less than 1.0), and the stock is not under a rebuilding plan, then the following AMs will apply:

(i) If the ACL has been exceeded. If the ACL has been exceeded, then adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as a single-year adjustment.

(ii) If the ABC has been exceeded. If the ABC has been exceeded, then a single-year adjustment to the following year's recreational ACT will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as described in paragraph (d)(2)(ii)(A) of this section. In addition, adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following year.

(A) Adjustment to Recreational ACT. If an adjustment to the following year's Recreational ACT is required, then the ACT will be reduced by the exact amount, in pounds, of the product of the recreational overage, defined as the difference between the recreational

contribution to the catch above the ACL, and the payback coefficient, as specified in paragraph (d)(2)(ii)(B) of this section.

(B) Payback coefficient. The payback coefficient is the difference between the most recent estimates of B_{MSY} and biomass (i.e., $B_{MSY} - B$) divided by one-half of B_{MSY} .

(3) If biomass is above B_{MSY} . If the most recent estimate of biomass is above B_{MSY} (i.e., B/B_{MSY} is greater than 1.0), then adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as a single-year adjustment.

(e) AM for when the ACL is exceeded and a sector-to-sector transfer of allowable landings has occurred. If the fishery-level ACL is exceeded and landings from the recreational fishery and/or the commercial fishery are determined to have caused the overage, and a transfer between the commercial and recreational sector has occurred for the fishing year, as outlined in § 648.162(b)(2), then the amount transferred between the recreational and commercial sectors may be reduced by the ACL overage amount (pound-for-pound repayment) in a subsequent, single fishing year if the Bluefish Monitoring Committee determines that the ACL overage was the result of too liberal a landings transfer between the two sectors. If the Bluefish Monitoring Committee determines that the ACL overage was not the result of the landings transfer, the recreational AMs described in paragraph (d) of this section will be implemented.

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